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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,178	01/31/2002	Johann F. Hellenkamp	1.096.01	9383

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EXAMINER

THALER, MICHAEL H

ART UNIT PAPER NUMBER

3731

DATE MAILED: 12/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

03

Office Action Summary	Application No. 10/062,178	Applicant(s) HELLENKAMP, JOHANN F.	
	Examiner Michael Thaler	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

In order for applicant to properly claim priority to earlier applications, the first line of the specification must be amended to properly and clearly indicate the relationship (e.g. continuation or continuation in part) between the current application and the earlier applications. The addition of the phrase "is a continuation of and" makes the text confusing since the current application is not a continuation of all of the parent applications. For example, there is a continuation-in-part relationship listed later in the same paragraph. Further, the current application contains subject matter not present in Ser. No. 08/840,430 so that the "continuation" status throughout the chain between the current application and that application is incorrect.

Claims 2-37 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mueller ("The Surgical Armamentarium"). Mueller, as shown on the attached appendix, discloses a blade (blade No. 25 shown on page 3) having a blade holder (handle F shown on page 2), the blade front portion having an overall dimension which is larger than the rear portion, the blade having an edge (at the central opening) for engaging the blade holder, the underside of the blade holder having a flanged portion (the flange at the tip of the handle which passes through the opening

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in the blade), an underside of the blade being inclined at an angle with respect to the top side of the blade holder (i.e. when the rear portion of the blade is lifted relative to the blade holder when it is about to be detached from the blade holder in a manner similar to that shown in figure 43 of Abidin et al. (5,662,669), noting that the blade is still attached to the blade holder as required by claim 2, line 5. The Abidin et al. figure is cited merely to show or exemplify the inherent process of blade removal of Mueller. Abidin et al. is not being applied against the claims.), said top side adapted to be driven by a pin (since the top side, i.e., the side opposite to that which is shown in the figure, like the underside, has a recess extending longitudinally along the handle which is inherently capable of receiving a pin to move the handle). The Muller device is inherently capable of being used to cut the cornea. Alternatively, it would have been obvious that the Muller device is capable of being used to cut the cornea since it is a surgical blade. As to claim 6, the cutting edge on blade No. 25 is wider than the thickness dimension of the rear blade portion. As to claim 10, Mueller discloses a blade (blade I shown on page 5) having a blade holder (handle D shown on page 5), the rear portion of the blade including a side edge (the blunt edge at the top of the figure) which is tapered with respect to the

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cutting edge, the blade holder top side including a recess (The top side, i.e., the side opposite to that which is shown in the figure, like the underside, has a recess extending laterally across the handle, apparently for gripping purposes, which is inherently capable of receiving a pin to move the handle.), the blade holder including a sidewall which generally tapers from the front to the back of the blade holder (since the width of the blade holder gradually decreases from the top towards the bottom of the figure). As to claim 13, blade No. 24 on page 3 has a generally rounded taper near the top right portion of the figure. As to claim 24, Mueller shows a handle (at the forceps shown at E on page 4) which is removably connected to the blade holder when it grasps it. As to claim 25, the Mueller blade is inherently capable of avoiding interference with movement of a cutting head assembly appropriately dimensioned.

Applicant's arguments filed Nov. 24, 2004 have been fully considered but they are not persuasive. The Muller device is inherently capable of being used to cut the cornea since it is a surgical blade, thus meeting the claimed term "microkeratome".

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this

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action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

mht
12/7/04



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731